THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION Nos. 4137 & 8004 OF 2005

Date : 10-02-2006

Between:

Paila Narasimhaiah & Another.

…..Petitioners

and

State Authority constituted under Section 3 of A.P.Water, Land and Trees Act, rep. by Secretary, Rural Development, Government of A.P., Hyderabad & Others.

.....Respondents

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THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION Nos. 4137 And 8004 OF 2005

COMMON ORDER : (Per Hon'ble Sri Bilal Nazki, J)

These two writ petitions are being disposed of by this common order, as they raise same questions of law and fact.

Writ petition No.4137 of 2005 has been filed by one P.Narasimhaiah, who is Z.P.T.C. member and is resident of Tadipatri, Anantapur District. Writ petition No.8004 of 2005 has been filed by one P.Gopal Reddy. Both the petitions have been filed in public interest.

In writ petition No.4137 of 2005, the petitioner wants a direction to respondent Nos.1 to 3 to take steps forthwith to stop respondent No.4 from sinking any borewell and restrain them from operating the existing borewells in the Penna river belt. He also sought for cancellation of any permission granted to respondent No.4 for sinking of borewells.

In writ petition No.8004 of 2005, a declaration is sought that the permission granted by respondent Nos.1 to 6 to respondent No.7 to draw water from Penna river belt, was illegal. It also sought a direction that respondent No.7 should not be allowed to draw water from Penna river belt, Tadipatri, in the interest of justice.

The grounds on which such directions have been sought in two writ petitions, are almost same. Ultra Tech Cements (hereinafter referred to as 'Larsen and Toubro') is respondent No.4 in writ petition No.4137 of 2005 and the same Company is respondent No.7 in writ petition No.8004 of 2005. It is submitted in the writ petitions that State Government and its authorities had failed to prevent Larsen and Toubro from sinking borewells in the Penna river belt near Tadipatri, endangering further, the severely depleted groundwater levels of the neighbouring areas. It is submitted that Larsen and Toubro is a big cement manufacturing unit. It has obtained permission on the basis of a report prepared in the year 1996, well before the Andhra Pradesh Water, Land and Trees Act (Act 10 of 2002) (hereinafter referred to as 'the Act') was enacted. The Act sets up an elaborate structure, which includes the first three respondents for regulation and control of

ground water use. Tadipatri Mandal has been continuously declared as drought area for the last three years, therefore, it is the duty of respondent Nos.1 to 3 to stop the activity of Larsen and Toubro. Detailed complaints were made to the Government, but no action had been taken. The Anantapur District lies predominantly in the penna river basin. The river takes birth in Karnataka and enters Andhra Pradesh in Anantapur District. Over the years, the flow in the river has been depleted, thereby affecting the ground water level in the District of Anantapur. The situation has been worsened because of shortfall of rain in the District. Larsen and Toubro is a cement factory, located at Bhogasamudram in Tadipatri Mandal. The plant became operational in 1990's. At that time, the management of the factory made an application to the State Government to permit them to take water from the bed of the Penna river, through borewells, to meet the factory's water needs. A ground water investigation report was prepared by the Government and permission was recommended to Larsen and Toubro to sink borewells in the river belt and take a total of 1.46 Million Cubic Metres (MCM) of water per year. The report also noted that there were 1247 dug wells spread over 16 villages along the banks of the Penna river. There were also five wells for pumping 1.5 Million Gallons per day to Tadipatri town. The report also had cautioned that any large-scale withdrawal of water from the river belt could affect the pre-existing structures. It had also cautioned, "further large scale utilization of ground water requires caution". The report had further recommended, according to the petitioners, that Larsen and Toubro should be permitted to use borewells only for a period of eight months in a year i.e. from July to February. For the period beginning March and ending June, the factory was advised to make alternate arrangements if water is needed. The petitioners further contended that it was not known to them whether the Government had given any permission on the basis of the report, but they had seen the Larsen and Toubro sinking borewells only now, eight years after the report and whether any permission was granted to them and whether the provisions of the Act were followed or not, was not known to the petitioners. But it is stated that the Act puts upon the

State authorities and lower authorities the burden of protecting water resources, in particular, ground water resources.

In writ petition No.8004 of 2005, counters have been filed by respondent No.5 - the Superintending Engineer and by the Member Secretary of Sri Satya Sai Water Supply Project Board. In writ petition No.4137 of 2005, counters have been filed by Larsen and Toubro Company as well as by respondent No.2 – District Collector, Anantapur District on her behalf and on behalf of respondent No.3. So, in fact, if both the petitions are taken together, then we have counter affidavits by Larsen and Toubro, the Superintending Engineer and also the District Collector.

The District Collector, Anantapur, in her affidavit, has stated that the Government in G.O.Ms.No.47, on 14.3.1997, permitted Larsen and Toubro to withdraw ground water from Penna river for a period of 240 days in a year from July to February to an extent of 0.877 MGD, subject to conditions. This G.O. was, however, amended by another G.O. being G.O.Ms.No.162, dated 15.7.1997, permitting drawl of ground water to the extent of 2000 Cums. per day from Penna river bed for a period of 365 days in a year. It is admitted that though the permission was accorded by the Government, Larsen and Toubro did not dig borewells till 2005 for the reasons which were known to the Company. However, Larsen and Toubro submitted a letter on 15.12.2003 to the Collector, informing the authority that since they have taken various measures on their own, the requirement of drawl of ground water from 2000 Cums., has come down to 1100 Cums. and for this purpose, they would like to draw 500 Cums. per day, which was required for drinking purposes of its employees residing in the township adjacent to the plant and to the contract labourers attached to the Plant. Larsen and Toubro also intimated the steps it had taken to utilize seepage water for the operation of the Plant. Similar request was sent by Larsen and Toubro to the District Collector in its letter dated 24.2.2005. Since respondent No.4 i.e. Larsen and Toubro had stated that its requirement had come down from 2000 Cums. to 500 Cums. per day, the Collector felt it necessary

to get a report from Superintendent Engineer, R.W.S., Anantapur and Geologist, Ground Water Department. These authorities inspected Penna river at Tadipatri on 25.2.2005 along with the Deputy Executive Engineer, the Assistant Executive Engineer of Sri Satya Sai Water Supply Project Board and also the Executive Engineer, R.W.S. Division (North), Anantapur. These authorities submitted a report, which stated that there were six Central Power Water Supply Schemes – three pertaining to RWS and three pertaining to Sri Satya Sai Water Supply Project Board. Tadipatri Municipality had 1400 agricultural borewells and 620 factory borewells, which were drawing water from the Penna river. The total drawl of water per day was 227 MLD. The committee had also reported that if Larsen and Toubro withdraws 500 Cums. per day, it would only be nominal, as water was already being drawn to the extent of 227 MLD. The 500 Cums., which was the requirement of Larsen and Toubro, was only 0.5 MLD. The Committee, in its report, recommended drawl of 0.5 MLD per day by respondent No.4, subject to conditions. Considering the said report, the District Collector issued order dated 03.03.2005, permitting Larsen and Toubro for drawl of water from Penna river to the extent of 500 Cums. (0.5 MLD) per day. The order was passed by her, keeping in view the drought conditions prevailing in Anantapur District. She also stated in her counter that although the Government had granted permission to Larsen and Toubro to withdraw 2000 Cums. per day, she only allowed them to draw 500 Cums. per day.

The Superintendent Engineer, RWS, Anantapur District, has filed counter in writ petition No.8004 of 2005. He disputes that there was no surface water flow in the Penna river for the last seven years. It is submitted that there was heavy flood during November, 2001 in the entire stretch of Penna river, right from Pamidi to Tadipatri. Every year, surface water flows in the river at Tadipatri. Even if there is meager rainfall, there would be surface water flow in the river of Penna. It is also stated that permission had earlier been granted to Larsen and Toubro to withdraw 2000 Cums. per day, but they could not use the facility because of their financial constraints.

In writ petition No.4137 of 2005, Larsen and Toubro has also filed counter affidavit. They have also stated what has been stated by the District Collector in her affidavit. It is added that there were no protests from the local people of the neighbouring villages when they started sinking borewells. They also stated that they have obtained permission from Grampanchayat and have obtained permission from the District Collector. It is further mentioned that the water derived from Penna river belt is only used for the purpose of employees and their families residing in the township attached to the Plant. It is further submitted that the employees, who are working with the Plant, have also a right to get drinking water, which is not possible otherwise than by digging borewells.

When these writ petitions came before us, we passed certain orders from time to time. On 29th April, 2005, the Counsel for the State submitted that there was no permission granted to Larsen and Toubro to draw water from the borewells, but they were only authorized to draw water from surface water when there was water in the river, which was disputed by the counsel for Larsen and Toubro and we directed Larsen and Toubro not to draw any water from the sub-surface of Penna river belt. Later on, the permission was shown by the Larsen and Toubro and the order was amended on 18.7.2005 and this Court passed the following order,

> "the order dated 21.04.2005 is modified to the extent of respondent No.4 shall be permitted to draw a quantity of 150 CUMS.S. per day, till further orders, from sub-surface water."

Thereafter, the case was finally heard.

We have discussed hereinabove, all the facts leading to the passing of impugned orders. The permission was first granted in the year 1997, but the respondent Larsen and Toubro did not utilize the water and it is only in 2005, for the first time, they started utilizing the

water. In the year 2000, an Ordinance was promulgated, which was later repealed by Act 10 of 2002. This Act was enacted to promote water conservation, and tree cover and regulate the exploitation and use of ground and surface water for protection and conservation of water sources, land and environment and matters connected therewith or incidental thereto. Under sub-section (3) of Section 1, it is stated, “It shall come into force on such date as the State Government may, by notification appoint.”

Section 2 of the Act gives the definitions, Section 3 lays down the procedure for constitution of Water, Land and Trees Authority, and Section 6 lays down the functions of the authority. One of the functions of the authority is to promote water conservation and enhancement of tree cover in the State, and one of the other functions is to regulate the exploitation of ground and surface water in the State.

The respondents have shown us that Larsen and Toubro is running a Unit, where number of persons are living in the Plant itself and they have sanctioned 500 Cums. of water per day for those persons working with the Plant. Though we have been furnished some data, it will not be possible for this Court to come to a conclusion as to what amount of water would be needed by Larsen and Toubro and if 500 Cums. of water is supplied to them, whether it would be sufficient to the population living in the area. We would not like to deprive the employees working for Larsen and Toubro of drinking water, but at the same time, we would also not like them to take so much water, as it affects the inhabitants of the area adversely. In any case, they could not get water per capita in excess of what is being supplied to the inhabitants of the area.

It is reported that the Act has been enforced by notification vide G.O.Ms.No.239, panchayat Raj and Rural Development (RD, IV), dated 25.6.2002 and the authority has been constituted under Section 3 of the Act. Therefore the issues raised in this writ petition be referred to the authority. The authority shall consider the application

of Larsen and Toubro afresh, take into account the availability of water, the requirement of the citizens of the area, and the amount of water that is being supplied per capita to the inhabitants of the area and then decide about the quantity of water that can be allowed to Larsen and Toubro, to be used from ground water.

By our order dated 18.7.2005, we had allowed Larsen and Toubro to lift 150 Cums. of water per day. We modify it to the extent that they may be permitted to lift 250 Cums. of water per day, till a decision is taken by the Government. We are allowing Larsen and Toubro to lift 100 Cums. of water more than we had already ordered, by taking judicial notice of sufficient rainfall this year in the State of Andhra Pradesh.

Writ petitions are accordingly disposed of. No order as to costs.

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(BILAL NAZKI, J)

10-02-2006

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(R.SUBHASH REDDY, J)

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